

806 KAR 3:150. Standards for consideration of a hazardous financial condition.

RELATES TO: KRS 304.2-310, 304.3-200, 304.3-240, 304.3-241, 304.3-242, 304.06, 304.07, 304.33-140, 304.37, 304.49-010(8), 304.33-190

STATUTORY AUTHORITY: KRS 304.2-110, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: EO 2009-535, signed June 12, 2009, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. This administrative regulation establishes standards which the Commissioner of the Department of Insurance may use for identifying insurers found to be in a condition to render the continuance of their business hazardous to policyholders, creditors, or the public.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(2) "Insurer" means any of the entities listed in KRS 304.33-020 and an industrial insured captive insurer as defined in KRS 304.49-010(8).

Section 2. Standards. One (1) or more of the following standards may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in Kentucky may be hazardous to its policyholders, creditors, or to the general public:

(1) Adverse findings reported in financial condition or market conduct examination reports, audit reports and actuarial opinion, reports or summaries;

(2) The National Association of Insurance Commissioners Insurance Regulatory Information System and its other financial analysis solvency tools and reports;

(3) Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, considered in light of the assets held by the insurer with respect to the reserves and related actuarial items including the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts;

(4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(5) Whether the insurer's operating loss in the last twelve (12) month period or any shorter period of time, such as net capital gain or loss, change in nonadmitted assets, or cash dividends paid to shareholders, is greater than fifty (50) percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(6) Whether the insurer's operating loss in the last twelve (12) month period or any shorter period of time, excluding net capital gains, is greater than twenty (20) percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) Whether a reinsurer, obligor or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which may affect the solvency of the insurer;

(8) Any contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which may affect the solvency of the insurer;

- (9) Whether any controlling person of an insurer is delinquent in transmission or payment of net premiums to the insurer;
- (10) The age and collectability of receivables;
- (11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation necessary to serve the insurer in that position;
- (12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false or misleading information concerning an inquiry;
- (13) Whether the insurer has failed to meet financial and holding company filing requirements as set forth in KRS 304 Subtitle 3 and 304 Subtitle 37;
- (14) Whether management of an insurer either has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
- (15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;
- (16) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;
- (17) Whether management has established reserves that do not comply with minimum standards established in KRS 304 Subtitle 6 and KRS 304.3-242;
- (18) Whether management persistently engages in material under reserving that results in adverse development; and
- (19) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature.

Section 3. Corrective Action. (1) For the purposes of making a determination of an insurer's financial condition under this administrative regulation, the commissioner may:

- (a) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;
 - (b) Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with KRS 304 Subtitles 6 and 7;
 - (c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or
 - (d) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken with the next twelve (12) month period.
- (2) If the commissioner determines that the continued operation of the insurer in Kentucky may be hazardous to its policyholders, creditors, or to the general public, the commissioner may, upon his determination, issue an order requiring the insurer to:
- (a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;
 - (b) Reduce, suspend, or limit the volume of business being accepted or renewed;
 - (c) Reduce general insurance and commission expenses by specified methods;
 - (d) Increase the insurer's capital and surplus;
 - (e) Suspend or limit the declaration and payment of dividends by an insurer to stockholders or policyholders;

- (f) File reports concerning the market value of the insurer's assets;
 - (g) Limit or withdraw from certain investments or discontinue certain investment practices to the extent reasonably necessary;
 - (h) Document the adequacy of premium rates in relation to the risks insured;
 - (i) File, in addition to regular annual statements, interim financial reports in the form of and pursuant to the instructions for the quarterly statements prescribed by the National Association of Insurance Commissioners in accordance with KRS 304.3-240 and 304.3-241;
 - (j) Correct corporate governance practice deficiencies, as identified by the Financial Standards and Examination Division staff through the analysis or examination process;
 - (k) Provide a business plan to the commissioner in order to continue to transact business in the state; or
 - (l) Adjust rates for any non-life insurance product written by the insurer to improve the financial condition of the insurer.
- (3) Any insurer subject to an order under subsection (2) of this section may request an administrative hearing to review the order in accordance with KRS 304.2-310. (18 Ky.R. 239; Am. 700; eff. 9-6-1991; 19 Ky.R. 2498; eff. 7-23-1993; TAm eff. 8-9-2007; 36 Ky.R. 794; eff. 11-6-2009.)